

JUDGE: Mary Jo Heston
CHAPTER: 7
HEARING LOCATIONS: TACOMA
HEARING DATE: JULY 19, 2018
HEARING TIME: 9:00 A.M.
RESPONSE DATE: JULY 12, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

Dolce Si, LLC) Bankruptcy Case No. 18-41191-MJH
)
) Chapter 7
)
) Motion for Relief from Stay
Debtor.)

In re:)
Elisabetta Rosalinda O'Shea,) Bankruptcy Case No. 18-41204-MJH
and Steven Patrick O'Shea,)
) Chapter 7
)
Debtor.) Motion for Relief from Stay

MOTION FOR RELIEF FROM STAY AND BRIEF IN SUPPORT

Movant Point Ruston Apartments, LLC, by and through undersigned counsel, pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001, requests an order conditioning, modifying, or dissolving the automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code. Movant prays for an Order from the Court granting Movant relief from the automatic stay and to allow it to foreclose on its statutory landlord's lien under state law and procedures and to re-lease the premises covered by the Dolce Si lease to new tenants. Movant seeks any further relief to which the Movant may be entitled.

MOTION TO LIFT STAY

Law Offices of Jack B. Krona Jr.
5219 N. Shirley St. #100
Ruston, WA 98407
(253) 341-9331

I.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case is proper and this Motion is proper under 28 U.S.C. § 1408 and 1409.

II.

Movant is the holder of a landlord's lien, more particularly described in paragraph IV, below, and has standing to bring this motion because of its status as a secured creditor.

III.

On April 4, 2018, Dolce Si, LLC ("Dolce Si") filed a petition for relief under Chapter 7 of the Bankruptcy Code. Movant is a secured creditor. Mark Waldron has been appointed Trustee. On June 6, 2018, Waldron indicated his intent to abandon the property subject to the Movant's landlord lien. (June 6, 2018, "Ch. 7 Trustee Report of No Distribution," ECF Docket Entry, Case No. 18-41191-MJH.)

IV.

Effective May 7, 2015, Dolce Si entered a "Mixed-Use Center Lease Agreement" with Point Ruston Apartments, LLC ("Movant" or "PRA"). Elisabetta Rosalinda O'Shea is a lease guarantor and manager and member of Dolce Si, who also concurrently filed an individual Chapter 7 Bankruptcy along with her Husband, Steven Patrick O'Shea. Dolce Si used the premises to operate the Dolce Si Bakery at 5005 Main St., Suite 105, Tacoma, WA 98407, a copy of which is attached to the Declaration of Steven Willock in support of this motion as Exhibit A. Dolce Si vacated the property and repudiated the lease before filing for bankruptcy. Dolce Si owes Movant for more than two months in unpaid rent. RCW 60.72.010 grants Movant a statutory lien for such rent upon personal property which has been used or kept on the rented property by the tenant, and such liens for rent "shall be paramount to, and have preference over, all other liens except for liens

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1 for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the
2 tenancy.” The two-month past-due rent amount is \$13,774.28.

3 V.

4 The landlord’s lien granted by RCW 60.72.010 to secure two-months of rent attaches to
5 the property specifically listed in the Appraisal Report of Joshua Pearce, a copy of which is
6 attached to the Willock Declaration as Exhibit B, as well as any other personal property left on the
7 premises.

8 VI.

9 The landlord’s lien attaches to the property and was perfected by operation of law without
10 the necessity of a writing or recording. *See* RCW 60.72.010.

11 VII.

12 The total value of the property subject to the lien is estimated at \$14,070.20. The valuation
13 method Bargreens used in the attached report was 10% of new value, which is based upon its
14 current location. Any buyer would need to move the equipment, and much of the equipment is
15 hard-wired. So, the buyer would also need to hire and pay an electrician before they could remove
16 the equipment. Factoring moving costs, the costs of an electrician, and considering that Movant
17 has been storing the equipment for several weeks now, a more reasonable value for the equipment
18 is closer to 5% of new value. Also, the appraisal included items which are clearly fixtures and
19 were never intended to be the tenant’s property after lease termination/expiration. These include
20 the sinks, counter-tops, hood, and walk-in cooler. (Willock Declaration.)

21 Overall, to document the actual value of the equipment, Movant has prepared a
22 spreadsheet, a copy of which is attached to the Willock Declaration as Exhibit C. The spreadsheet
23 omits the fixtures noted above and identifies the equipment value based upon the 5% valuation
24 method. The total value for all such equipment is estimated to be \$14,070.20, which approximates
25 the value of movants landlord’s lien and does not include the costs associated with asserting this
26

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1 lien for moving for relief from the stay. The Movant seeks to foreclose on its landlord's lien under
2 state law and procedures, and will liquidate the value of the property subject to the lien through a
3 sale authorized by state law and procedure.

4 Although the property at issue belonged to Dolce Si, Movant concurrently filed this motion
5 in both the Dolce Si and the O'Shea's bankruptcy proceeding. As demonstrated by the signature
6 of Dolce Si's counsel, who also represents Elisabetta Rosalinda O'Shea and Steven Patrick O'Shea
7 in their concurrently filed individual bankruptcy, who are collectively referred to herein as the
8 "Debtors," the Debtors stipulate that the two-months past-due Rent amount is \$13,774.28 and that
9 the liquidation value of the equipment as estimated by the Movant (\$14,070.20) is a fair and
10 reasonable valuation. The Debtors stipulate that the Movant's motion to lift stay to foreclose its
11 landlord lien should be granted. The Debtors stipulate that the Movant has a valid landlords' lien
12 on any equipment (and anything else, including personal property) remaining on the premises and
13 that the value of the lien exceeds any claim the Debtors might otherwise have to the remainder of
14 the proceeds of the lien after the lien is liquidated, through a sale or otherwise, and that they have
15 no equity in any equipment (and anything else, including personal property) remaining on the
16 premises. The Debtors also stipulate that the Dolce Si lease was terminated before the Dolce Si
17 and the personal bankruptcies were filed.

18 VIII.

19 Under the terms of the commercial lease, the Dolce Si was required to pay monthly rent.
20 As of the date of the filing of the Petition, the Dolce Si was in default under the lease and failed to
21 pay the monthly rent as required. Dolce Si has applied all monthly payments it received to the
22 total amount due. As of June 28, 2018, there is currently due and owing on the lease the
23 outstanding principal balance of \$156,743.01 in rent, utility charges and late fees. This amount
24 does not include interest. Other obligations may be due.

25
26
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1 IV.

2 Other parties known to potentially have an interest in property subject to the Landlord's
3 lien are Kabbage, Inc., 925B Peachtree St. NE #1688, Atlanta, GA 30309. All interested parties
4 are being served with a copy of this motion.

5 X.

6 Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1)
7 and 362(d)(2) because Dolce Si has no equity in the property subject to the lien and the property
8 is not necessary to effectuate any plan of reorganization. Also, the Trustee has indicated an intent
9 to abandon the property of the Dolce Si and the Debtors stipulate that the relief requested herein
10 should be granted.

11 XI.

12 Movant attaches a Declaration in support of this motion as Exhibit 1, and a Proposed Order
13 as Exhibit 2.

14 **PRAYER FOR RELIEF**

15 Movant prays for an Order from the Court granting Movant relief from the automatic stay
16 and to allow it to foreclose on its statutory landlord's lien under state law and procedures and to
17 re-lease the premises to new tenants. Movant further requests that the 14-day stay period provided
18 by Federal Rules of Bankruptcy Procedure Rule 4001(a)(3) be waived. Movant seeks any further
19 relief to which the Movant may be entitled.

20 DATED this 28th day of June 2018.

21 Law Offices of Jack B. Krona, Jr., Esq.

22 By /s/

23 Jack B. Krona Jr., Esq.
24 WSBA# 42484

25 MOTION TO LIFT STAY

26 Law Offices of Jack B. Krona Jr.
5219 N. Shirley St. #100
Ruston, WA 98407
(253) 341-9331

Stipulated and Agreed By:

/s/

Brett Wittner

Morton McGoldrick, P.S.

Counsel for Dolce Si, LLC, Elisabetta Rosalinda
O'Shea and Steven Patrick O'Shea

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WSBA# 42484

j.krona@yahoo.com

Label Matrix for local noticing
0981-3
Case 18-41204-MJH
Western District of Washington
Tacoma
Thu Jun 28 13:25:59 PDT 2018

U.S. Bankruptcy Court
1717 Pacific Avenue
Suite 2100
Tacoma, WA 98402-3233

Bank of America
PO Box 851001
Dallas, TX 75285-1001

Muckleshoot Casino
6370 Auburn Way S.
Auburn, WA 98002

Point Ruston
c/o Rainier Property Services
5219 N. Shirley St.
Tacoma, WA 98407-6599

(p)WA STATE DEPT OF LABOR & INDUSTRIES
BANKRUPTCY UNIT
PO BOX 44171
OLYMPIA WA 98504-4171

United States Trustee
700 Stewart St Ste 5103
Seattle, WA 98101-4438

Elisabetta Rosalinda O'Shea
3216 N. Stevens St.
Tacoma, WA 98407-4741

Santander Consumer USA Inc.
c/o Stewart, Zliten & Jungers, Ltd.
2860 Patton Road
Roseville, MN 55113-1100

American Express
PO Box 981535
El Paso, TX 79998-1535

Dolce Si, LLC
3216 N. Stevens St.
Tacoma, WA 98407-4741

NASA Federal Credit Union
PO Box 1910
Bowie, MD 20717-1910

Point Ruston Apartments, LLC
5219 N. Shirley St.
Tacoma, WA 98407-6599

State of Washington
Employment Security Department
PO Box 9046
Olympia, WA 98507-9046

(p)VOLKSWAGEN CREDIT UNION
1401 FRANKLIN BLVD
LIBERTYVILLE IL 60048-4460

Mark D Waldron
6711 Regents Blvd W
Suite B
Tacoma, WA 98466-5421

VW CREDIT, INC.
14841 Dallas Parkway, Suite 300
Dallas, TX 75254-7883

American Express National Bank
c/o Becket and Lee LLP
PO Box 3001
Malvern PA 19355-0701

IRS
PO Box 7346
Philadelphia, PA 19101-7346

Navy Federal Credit Union
PO Box 3500
Merrifield, VA 22119-3500

Santander Consumer USA
PO Box 961245
Terrell, TX 75161

USAA Bank
9800 Fredericksburg Rd.
San Antonio, TX 78288-0002

Brett L Wittner
Morton McGoldrick, P.S.
820 A Street
Suite 600
Tacoma, WA 98402-5293

Steven Patrick O'Shea
3216 N. Stevens St.
Tacoma, WA 98407-4741

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

State of Washington
Department of L&I
PO Box 44171
Olympia, WA 98504

(d)State of Washington
Department of Revenue
PO Box 44171
Olympia, WA 98504

Volkswagen Credit
PO Box 3
Hillsboro, OR 97123-0003

End of Label Matrix	
Mailable recipients	23
Bypassed recipients	0
Total	23

Label Matrix for local noticing
0981-3
Case 18-41191-MJH
Western District of Washington
Tacoma
Thu Jun 28 13:26:49 PDT 2018
Comcast
PO Box 34744
Seattle, WA 98124-1744

Dolce Si, LLC
3216 N. Stevens St.
Tacoma, WA 98407-4741

U.S. Bankruptcy Court
1717 Pacific Avenue
Suite 2100
Tacoma, WA 98402-3233

Elavon
7300 Chapman Hwy
Knoxville, TN 37920-6612

IRS
PO Box 7346
Philadelphia, PA 19101-7346

Kabbage, Inc.
925B Peachtree St. NE #1688
Atlanta, GA 30309-3918

Liberty Distributing
909 Valley Ave. NW
Puyallup, WA 98371-2517

Navy Federal Credit Union
PO Box 3500
Merrifield, VA 22119-3500

Point Ruston
c/o Rainier Property Services
5219 N. Shirley St.
Tacoma, WA 98407-6599

Point Ruston Apartments, LLC
5219 N. Shirley St.
Tacoma, WA 98407-6599

(p)WA STATE DEPT OF LABOR & INDUSTRIES
BANKRUPTCY UNIT
PO BOX 44171
OLYMPIA WA 98504-4171

State of Washington
Employment Security Department
PO Box 9046
Olympia, WA 98507-9046

Steve and Elisabetta O'Shea
3216 N. Stevens St.
Tacoma, WA 98407-4741

Tacoma Public Utilities
3628 S. 35th St.
Tacoma, WA 98409-3192

United States Trustee
700 Stewart St Ste 5103
Seattle, WA 98101-4438

Brett L Wittner
Morton McGoldrick, P.S.
820 A Street
Suite 600
Tacoma, WA 98402-5293

Mark D Waldron
6711 Regents Blvd W
Suite B
Tacoma, WA 98466-5421

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State of Washington
Department of L&I
PO Box 44171
Olympia, WA 98504

(d)State of Washington
Department of Revenue
PO Box 44171
Olympia, WA 98504

End of Label Matrix	
Mailable recipients	17
Bypassed recipients	0
Total	17